IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THRUSDAY, THE NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 21025 of 1999

Between:

Apsara Cinema House, Vijayawada,

rep by its Managing Partner , K.Venkateshwara Rao.
S/.Chandraiah, R/o. Vijayawada.

..... PETITIONER

AND

1 Govt. of A.P. rep by its Prl. Secretary,

Home Dept, Secretariat,
Hyderabad.
2 The Joint Collector,
Krishna District, Machilipatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction, more particularly one in the nature of WRIT of MANDAMUS declaring the 1st respondent's Memo.No.1730 Genl.A1/94-3, Dt.23.5.1995 as illegal, null, void and arbitrary.

Counsel for the Petitioner:MR.K.DURGA PRASAD

Counsel for the Respondent Nos.1 and 2: GP FOR HOME

The Court made the following :

THE HON'BLE SRI JUSICE V.V.S.RAO

WRIT PETITION NO.21025 OF 1999

ORDER:

The petitioner is a cinema theatre having B-form licence under A.P.Cinemas (Regulation) Act, 1955. The Writ Petition is filed questioning the Memo No.1730/Genl.A1/94-3, dated 23.5.1995.

The question raised in this Writ Petition is squarely covered by my judgment in **Natraj Theatre v. Government of Andhra Pradesh,** which was subsequently followed by other Judges of this Court. Following the same, this Writ Petition is disposed of with the following directions.

1. The impugned Memo No.1730/Genl.A1/94-3 dated 23.5.1995 is declared as *ultra vires*, without power or jurisdiction and the same is set aside.

2. Consequential orders passed by the Licensing Authority, if any, are vitiated as the Licensing Authority abdicated its statutory functions and acted as per the dictates of the Government, and they accordingly are set aside.

3. If the petitioner has already been accorded permission for reducing seating capacity either by the Government or by the Licensing Authority, the same shall not be rescinded. However, if the order is passed by the Government pursuant to the interim orders of this Court, a formal order by the Licensing Authority is a must to save the order of the Government from the vice of being void order.

4. The petitioner is permitted to make application to the Licensing Authority seeking reduction of seating capacity, if not already made before or during the pendency of the writ petition. Such application shall be considered in accordance with law and keeping in view the observations in this judgment. For the purpose of direction No.3 above the application made by the petitioner, if any, shall be considered.

5. If any licensee has reduced seating capacity in anticipation of sanction by the Licensing Authority, the Licensing Authority may inspect the theatre and give further directions as may be appropriate to avoid abuse or misuse of reduced seating capacity. This direction is in accordance with the

judgment of the Division Bench of this Court in W.P.No.9640 of 1984 dated 30.10.1984.

6. The licensee shall not be entitled to enhance the rates of admission which has been already sanctioned by the Government vide G.O.Ms.No.218 dated 14.7.1995 and any further enhancement by the licensee will be in accordance with further sanction by the competent authority.

7. It is further directed that the Licensing Authority has to consider any application filed at any time seeking reduction of seating capacity subject to the provisions of the Rule 10-A without any restriction as to cut off date. And

8. There shall be no order as to costs.

2005. (V.V.S.RAO, J)

bnr

To

1. The Principal Secretary, Home Department,

Secretariat, Hyderabad

2. The Joint Collector, Krishna District

Machilipatnam

3. 2 CCs to G.P. for Home, High Court Bldgs., Hyderabad (OUT)

4. 2 CD copies.